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**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

FRANK X. SANDIGO, R.C.P.
1548 North 3rd Avenue
Upland, CA 91786

Respiratory Care Practitioner License No. 18392,
Respondent.

Case Nos. 1H 2007 604

OAH No.

ACCUSATION

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about December 20, 1995, the Board issued Respiratory Care Practitioner License No. 18392 to FRANK X. SANDIGO (Respondent). The Respiratory Care Practitioner License was in full force and effect and all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

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1 **PRIOR DISCIPLINE**

2 3. On or about April 2, 1999, in a previous disciplinary action entitled “In the
3 Matter of the Accusation and Petition to Revoke Against FRANK XAVIER SANDIGO,” Case
4 No. R-1272, the Board issued a decision and order in which Respondent’s Respiratory Care
5 Practitioner License Number 18392 was revoked.¹ On or about November 2, 2005, Respondent
6 filed a Petition for Reinstatement of Licensure. On or about October 20, 2006, the Respiratory
7 Care Board granted the Petition for Reinstatement of Licensure conditioned on Respondent’s
8 completion of 15 continuing education units and payment of costs incurred in review and
9 investigation of the Petition for Reinstatement of Licensure. On or about December 20, 2006,
10 Respondent’s Respiratory Care Practitioner License Number 18392 was reinstated.

11 **JURISDICTION**

12 4. This Accusation is brought before the Board under the authority of the
13 following laws. All section references are to the Business and Professions Code (Code) unless
14 otherwise indicated.

15 5. Section 3710 of the Code states, in pertinent part, that “The Respiratory
16 Care Board of California, hereafter referred to as the board, shall enforce and administer this
17 chapter [Chapter 8.3, the Respiratory Care Practice Act].”

18 6. Section 3718 of the Code states: “The board shall issue, deny, suspend,
19 and revoke licenses to practice respiratory care as provided in this chapter.”

20 7. Section 3750 of the Code states:
21 “The board may order the denial, suspension or revocation of, or the
22 imposition of probationary conditions upon, a license issued under this chapter,
23 for any of the following causes:

24 “...

25 “(d) Conviction of a crime that substantially relates to the qualifications,
26

27 1. The Board’s decision and order in Case No. R-1272 is attached hereto as Exhibit A and
28 incorporated by reference as if fully set forth herein.

1 functions, or duties of a respiratory care practitioner. The record of conviction or
2 a certified copy thereof shall be conclusive evidence of the conviction.

3 “...”

4 8. Section 3752 of the Code states,

5 “A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere made to a charge of any offense which substantially relates to the
7 qualifications, functions, or duties of a respiratory care practitioner is deemed to
8 be a conviction within the meaning of this article. The board shall order the
9 license suspended or revoked, or may decline to issue a license, when the time for
10 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or
11 when an order granting probation is made suspending the imposition of sentence,
12 irrespective of a subsequent order under Section 1203.4 of the Penal Code
13 allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation,
15 information, or indictment.”

16 9. Section 3754 of the Code states: “The board may deny an application for,
17 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
18 upon, a license in any decision made after a hearing, as provided in Section 3753.”

19 10. California Code of Regulations, title 16, section 1399.370, states, in
20 pertinent part:

21 “For the purposes of denial, suspension, or revocation of a license, a crime
22 or act shall be considered to be substantially related to the qualifications,
23 functions or duties of a respiratory care practitioner, if it evidences present or
24 potential unfitness of a licensee to perform the functions authorized by his or her
25 license or in a manner inconsistent with the public health, safety, or welfare. Such
26 crimes or acts include but are not limited to those involving the following:

27 //

28 //

1 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
2 abetting the violation of or conspiring to violation any provision or term of the
3 Act.

4 “...

5 (c) Conviction of a crime involving driving under the influence or reckless
6 driving while under the influence.

7 “...”

8 **COST RECOVERY**

9 11. Section 3753.5, subdivision (a) of the Code states:

10 “In any order issued in resolution of a disciplinary proceeding before the
11 board, the board or the administrative law judge may direct any practitioner or
12 applicant found to have committed a violation or violations of law to pay to the
13 board a sum not to exceed the costs of the investigation and prosecution of the
14 case.”

15 12. Section 3753.7 of the Code states:

16 “For purposes of the Respiratory Care Practice Act, costs of prosecution
17 shall include attorney general or other prosecuting attorney fees, expert witness
18 fees, and other administrative, filing, and service fees.”

19 13. Section 3753.1 of the Code states:

20 “(a) An administrative disciplinary decision imposing terms of probation
21 may include, among other things, a requirement that the licensee-probationer pay
22 the monetary costs associated with monitoring the probation.

23 “...”

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Conviction of Crimes Substantially Related to the Qualifications,
26 Functions, or Duties of a Respiratory Care Practitioner)

27 14. Respondent has subjected his Respiratory Care Practitioner License
28 Number 18392 to disciplinary action under section 3750, as defined by section 3750, subdivision

(d), and 3752 of the Code, and Title 16 of the California Code of Regulations, section 1399.370, subdivision (a), in that Respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a Respiratory Care Practitioner, as more particularly described in paragraphs 15 through 26, below.

15. On or about August 16, 2006, Respondent was arrested in the State of Nevada for violating Nevada Revised Statute section 484.379, driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor.

16. On or about December 1, 2006, Respondent was charged in the case entitled *People of the State of Nevada v. Frank Xavier Sandigo*, Justice Court, Las Vegas Township Court Case No. 06TA4211X, with violating Nevada Revised Statute section 484.379, driving and/or being in actual physical control while under the influence of intoxicating liquor.

17. On or About June 18, 2007, Respondent plead nolo contendere to the following charges in Case No. 06TA4211X:

(a) Driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor in violation of Nevada Revised Statute section 484.379, a misdemeanor.

18. On or about June 18, 2007, the Court sentenced Respondent in Case No. 06TA4211X to two (2) days in jail, a fine of \$580.00, and completion of DUI school and a victim impact panel.

19. On or about March 15, 2008, Respondent was arrested for public intoxication in violation of Penal Code section 647 (f).

20. On or about March 26, 2008, Respondent was charged in the case entitled *People of the State of California v. Francisco Xavier Sandigo*, San Bernardino Superior Court Case No. MWV802399, with a violation of Penal Code section 647 (f), public intoxication.

21. On or about July 8, 2008, Respondent plead guilty in Case No. MWV802399 to public intoxication in violation of Penal Code section 647 (f).

22. On or about July 8, 2008, Respondent was sentenced in Case No. MWV802399 to probation for a term of twenty-four (24) months and fines in the amount of

1 \$590.00.

2 23. On or about October 10, 2008, Respondent was arrested for public
3 intoxication in violation of Penal Code section 647 (f).

4 24. On or about November 7, 2008, Respondent was charged in the case
5 entitled *People of the State of California v. Francisco X. Sandigo*, San Bernardino Superior
6 Court Case No. U413485FS, with a violation of Penal Code section 647 (f), public intoxication.

7 25. On or about December 30, 2008, Respondent plead guilty in Case No.
8 U413485FS to public intoxication in violation of Penal Code section 647 (f).

9 26. On or about December 30, 2008, Respondent was sentenced in Case No.
10 U413485FS to a fine in the amount of \$145.00.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Conviction of a Crime Involving Driving Under the Influence)

13 27. Respondent has further subjected his Respiratory Care Practitioner License
14 Number 18392 to disciplinary action under section 3750, as defined by section 3750, subdivision
15 (d), as defined by California Code of Regulations section 1399.370, subdivision (c), in that he
16 was convicted of a crime involving driving under the influence of alcohol, as more particularly
17 described in paragraphs 15 through 18, above, which are hereby incorporated by reference and
18 realleged as if fully set forth herein.

19 **FACTORS IN AGGRAVATION**

20 28. To determine the degree of discipline, if any, to be imposed on
21 Respondent, Complainant alleges that on or about April 2, 1999, in a previous disciplinary action
22 entitled "In the Matter of the Accusation and Petition to Revoke Against FRANK XAVIER
23 SANDIGO," Case No. R-1272, the Board issued a decision and order in which Respondent's
24 Respiratory Care Practitioner License Number 18392 was revoked. On or about November 2,
25 2005, Respondent filed a Petition for Reinstatement of Licensure. On or about October 20, 2006,
26 the Respiratory Care Board granted the Petition for Reinstatement of Licensure conditioned on
27 Respondent's completion of 15 continuing education units and payment of costs incurred in
28 review and investigation of the Petition for Reinstatement of Licensure. On or about December

20, 2006, Respondent's Respiratory Care Practitioner License Number 18392 was reinstated.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License No. 18392, issued to Respondent Frank X. Sandigo;
2. Directing Respondent Frank X. Sandigo to pay the Respiratory Care Board of California the costs of the investigation and enforcement and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: January 22, 2009

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
State of California
Complainant